

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 537 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SAMADBHAI REHMANBHAI

Versus

HEIRS OF R Z SHAH-

HIRABEN WD/O RATILAL Z SHAH

Appearance:

MR PV NANAVATI for Petitioner

MR MB GANDHI for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 07/07/2000

ORAL JUDGEMENT

#. This is tenant's revision under Section 29(2) of the Bombay Rent Act against concurrent findings on subletting recorded by the two courts below.

#. The brief facts giving rise to this revision are as under.

#. The plaintiff landlord filed a suit for eviction against the two defendants alleging that the disputed accommodation was let out to the defendant No.1 and the defendant No.2 was illegally inducted as sub tenant by the defendant No.1. Another ground for eviction was that the tenant-in-chief was in arrears of rent exceeding 6 months but he did not pay the same despite service of notice of demand. The third ground for eviction was that the premises was reasonably and bonafide required by the landlord for his personal use and occupation. The premises was let out at the rate of Rs.45/- per month besides municipal taxes and Rs.5/- towards electricity charges.

#. The suit was contested by the defendant No.1 on the ground that there was partnership agreement between the defendant No.1 and 2 entered in the year 1967. The defendant No.2 was not illegal sub tenant. It was also denied that the defendant No.1 was arrears of rent exceeding 6 months. It was further denied that the premises was reasonably and bonafide required by the landlord for his personal use. Dispute of accounts arose between the defendants No.1 & 2, as a consequences thereof, Civil Suit No, 960 of 1969 was filed in the City Civil Court against the defendant No.2 for accounts of partnership business. The defendant No. 2 in that suit pleaded that the partnership agreement was bogus and he was sub tenant of the defendant no.1 on monthly rent of Rs.90/plus municipal taxes and electricity charges. The theory of partnership was not accepted by the City Civil Court, hence, the suit was dismissed. Thereafter, the defendant No.1 filed H.R.P. Suit No.2403 of 1973 and the defendant No.2 also filed standard rent application. The suit No.2403 of 1973 was dismissed but no appeal was filed. The standard rent was fixed at Rs.45/- per month plus Rs.5/- for electricity charges besides municipal taxes. It was pleaded that the defendant No.1 gave the suit premises to the defendant No.2 for running cycle repair shop and he had not informed that he has taken consent of the landlord. It is also pleaded that the suit aforesaid was decided against the defendant No.2 whereafter, no appeal was filed. The defendant No.1 sold his rights in the property in dispute to the defendant No.2 including the goodwill and transferred his interest. The defendant No.2 assured that he will talk about it to the plaintiff that he will settle with him and therefore the defendant No.1 relied upon him and sold the tenancy rights including goodwill to the defendant No.2.

#. The defendant No.2 in his written statement pleaded that all the transactions between him and the defendant No.1 are within the knowledge and with the consent of the plaintiff and the tenancy rights in the suit shop had been purchased along with the goodwill in the knowledge of the plaintiff and that the defendant No.2 is in exclusive possession of the suit shop since 1966-67 and is paying rent to the defendant No.1. The defendant No.1 in turn is paying rent to the plaintiff and is obtaining receipts in his own name. Thus, he pleaded that the tenancy right in the suit shop was legally purchased so also the goodwill through a document. The defendant No.1 created a sham document of partnership with the defendant No.2 and that the defendant No.2 alone was running business of cycle repair shop in the suit shop. Since 1966-67 taxes were paid by the defendant No.2 directly. It is also pleaded that the letter of attornment was written to the plaintiff and the defendant No.2 had sent rent by money order to the plaintiff but he refused to accept the same. Reasonable and bonafide requirement of the landlord for the suit shop was denied.

#. The trial court, after considering evidence on record found that it was not established that the suit shop was reasonably and bonafide required by the landlord. It also did not believe the landlords' case that the tenant was in arrears of rent exceeding 6 months. However, the trial court accepted the case of the plaintiff that the defendant No.1 had unlawfully sublet or transferred or assigned the suit premises to the defendant No.2 who is in exclusive possession of the same. Consequently, decree for eviction was passed by the trial court.

#. An appeal was filed against the judgment and decree of the trial court. The only point pressed in the appellate court was regarding illegal subletting. The appellate court concurred with the finding of the trial court that the defendant No.1 had illegally sublet the suit premises to the defendant No.2. With this finding, the appeal was dismissed, hence this revision.

#. I have heard Shri P. V. Nanavati, learned counsel for the revisionist and Shri M.B.Gandhi, learned counsel for the respondents.

#. The contention of Shri Nanavati has been that in view of the sale deed for goodwill and tenancy rights executed by the tenant in chief in favour of the defendant No.2, it cannot be said that the defendant No.2 is illegal subtenant or that the tenancy rights have been illegally

assigned or transferred to the defendant No.2 by the defendant No.1. English translation of the sale deed for goodwill and tenancy rights has been filed which was read before me. Shri Nanavati has contended that the appellate court has wrongly interpreted this document as document which requires registration. He has drawn my attention to the recitals in this deed that since the goodwill was transferred for a sum of Rs.99/only, such deed does not require registration. He further contended that in view of this transfer or sale deed, the rights of the defendant No.2 are protected in view of Section 14 and 15 of the Bombay Rent Act.

##. I am unable to accept the contention of Shri Nanavati that the sale deed for goodwill executed for a sum of Rs.99/- only does not require registration. Section 54 of the Transfer of Property Act, in the first paragraph defines sale with which, we are not concerned in the present revision. The manner in which sale is to be made is provided in the second part of Section 54 of the Transfer of Property Act which provides that such transfer (meaning thereby sale), in the case of tangible immovable property of the value of one hundred rupees and upwards or in case of reversion or other intangible thing, can be made only by registered instrument. It further provides that in case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by registered instrument or by delivery of the property.

##. Bare reading of this provision would go to indicate that in case of tangible immovable property having value of one hundred rupees and upwards, the sale can be made only through registered instrument. Thus, where the value of tangible immovable property exceeds rupees one hundred, sale deed is compulsorily required to be registered. If sale deed for tangible immovable property is for a value less than one hundred rupees, the sale can be made either by registered instrument or by delivery of property. Thus, where the value of immovable property is less than one hundred rupees, delivery of property is sufficient requirement to complete the sale transaction. It can also be made by registered instrument but such document does not compulsorily require registration.

##. However, where the transfer or sale is in respect of intangible thing, under the aforesaid Section, it can be made only by registered instrument. Thus, Section 54 does not bifurcate sale of intangible things in two parts permitting transfer of intangible things having value of

Rs.99/- to be evidenced through unregistered document and intangible things having value of one hundred rupees or more to be evidenced by registered instrument. Thus, in case of every intangible thing, when the sale takes place, it can be made only by registered instrument. Goodwill is certainly intangible thing or property and not tangible immovable property. Consequently, it is immaterial that the deed in question before me was executed for a sum of Rs.99/- only. In view of Section 54 of the Transfer of Property Act, this deed is required to be registered. Since it is not registered, it becomes inadmissible in evidence and it can be read in evidence only for collateral purpose and not for the purpose of deciding whether goodwill was transferred along with the tenancy rights by the defendant No.1 to the defendant No. 2.

##. If it is read in evidence for collateral purpose, then, there is recital in this deed that the transfer was for consideration and the defendant No.2 is in exclusive possession of the suit shop since 1966-67. These are the requirements of illegal subletting which are admitted by the defendant No.2. It is also in evidence and further it is in the written statement of the defendant No.2 that the theory of partnership set up by the defendant No.1 was bogus and sham transaction. If there was no genuine partnership between the defendants, the question of sale of goodwill by the defendant No.1 to the defendant No.2 hardly arose and as such, firstly, sale deed of goodwill appears to be suspicious document and secondly in the absence of registration, it becomes inadmissible in evidence. As such, even in the face of notification of State of Bombay and in view of proviso to Section 15(1) of the Bombay Rent Act, such deed does not save the alleged illegal subtenancy created by the defendant No.1 in favour of the defendant No.2. It may also be mentioned that Section 15(1) of the Bombay Rent Act provides that notwithstanding anything contained in any law [but subject to any contract to the contrary] it shall not be lawful after coming into operation of this Act for any tenant to sublet the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein. The words "subject to any contract to the contrary" were introduced by subsequent amendment by Bombay Act No.49 of 1959. Thus, these words were on the statue when the alleged sub tenancy, in the instant case, was created in the year 1966-67. The appellate court has mentioned from the rent note that there was a specific prohibition in the rent note for subletting including transfer or assigning in any other manner including transfer of goodwill. In para 16 of the

judgment of the lower appellate court, it is mentioned that the rent note contains prohibition against subletting and also against the transfer or assignment in any way including transfer of goodwill. If that was the contract to the contrary between the parties, then, in my opinion, the defendant No.2 is hardly entitled to the protection of notification issued under the proviso to Section 15(1) of the Bombay Rent Act and Section 15(1) of the Bombay Rent Act can not save the alleged sub tenancy. Thus, in addition to concurrent findings of the two courts below on alleged sub tenancy, there is no legal infirmity in the findings recorded by the two courts below. Keeping in view the proviso to Section 15(1) of the Bombay Rent Act as well as Section 54 of the Transfer of Property Act, it is established that the defendant No.1 had illegally sublet, transferred or assigned the suit accommodation to the defendant No.2, hence the decree for eviction was rightly passed in favour of the landlord. I do not find any merit in the revision.

##. The revision is hereby dismissed with no order as to costs.

Date : 8-7-2000 [D. C. Srivastava, J.]

#kailash#